

REMARKS/ARGUMENTS

Re-examination and favorable reconsideration in light of the above amendments and the following comments are respectfully requested.

Claims 13 and 18 - 25 are currently pending in the application. All claims have been rejected.

By the present amendment, claims 13 and 18 have been amended. The amendment to claim 18 is directed to correcting a grammatical error and not for reasons relating to patentability.

In the office action mailed July 2, 2008, the Examiner objected to the description of shaft 29 as an output shaft as being new matter. While Applicant disagrees with this analysis, rather than argue the point, the word "output" has been deleted in favor of the word "first."

Further in the office action, the Examiner rejected claims 13 and 18 - 25 under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The Examiner avers that there is no support in the original specification for the following claim language; "being designed as a hollow cylinder having a horizontal axis and being closed on all sides" (claim 19, lines 3 - 4); "in such a manner as to be removable from the service drum by axial displacement" (claim 19, lines 8 - 10); "for foodstuffs to be cooked" (claim 19, line 16; and "for supplying the frying drum with portions of the foodstuffs" (claim 19, lines 18 - 19).

It is well settled case law that the exact words used in a claim do not have to appear in the specification for the written description requirement to be satisfied. It is also well settled that one can rely upon a combination of the written description and the drawings to support claim language. In the instant case, with respect to the phrase "being designed as a hollow cylinder having a horizontal axis and being closed on all

sides," this limitation is based on paragraph 0020 which reads: "[t]he frying drum, which is designed as a hollow cylinder closed on all sides, is provided" The additional feature "having a horizontal axis" is based on paragraph 0015 and Figure 4. According to paragraph 0015, Fig. 4 shows a vertical section of a frying drum. As one can easily see in Fig. 4, the axis of this frying drum is definitely horizontal, as it is perpendicular to the vertical section plane. Therefore, the claim language is supported by the original written description and the drawings.

With regard to the phrase "in such a manner as to be removable from the service drum by axial displacement," this phrase is based on paragraph [0022], lines 5 to 11, reading, "so that the frying drum 20 with exhausted cooking fat, following to sliding out of the discharge pipe 39 and the detachment of the plug-in coupling 34, can be pulled out of the service drum 10 as a unit and replaced by sliding a frying drum 20 with as yet unused cooking fat into the service drum 19." Paragraph [0018] further supports the wording "axial displacement" in lines 7 to 12 reading "[t]he service drum 19 is designed as a sheath closed at one end and open at the other end that accommodates the frying drum 20 with the discharge drum 21, which are slid into it. The open end of the service drum 19 is closed with a cover 22 that renders the frying drum 20 with the discharge drum 21 incapable of being displaced in the axial direction." These supports reasonably convey to one skilled in the art, that as of the filing date, the inventor had possession of the fact that the frying drum could be pulled out of the service drum and was replaceable and therefore removable from the service drum by axial displacement (sliding), if the cover was not fixed onto the service drum.

With respect to the phrase "for foodstuff to be cooked", this phrase is based on paragraph [0017] reciting in the first two sentences: "cooking of foodstuff: and "frying material container" meaning with "foodstuff" "frying material" and vice versa. It is also supported by original claim 1 directed to a frying device for cooking while swimming of portions of foodstuffs...."

With regard to the phrase "for supplying the frying drum with portions of the foodstuffs," this phrase is based on paragraph [0017] which reads in lines 6 - 11, "[u]tilizing appropriate means, a ladling pipe 15 for example, portions are measured in the storage container 12, fed into the transportation pipe 14 and from there introduced into the cooking device 13, the portions being then removed from the cooking device 13 after the cooking has been completed."

For these reasons, the rejection under 35 U.S.C. 112, first paragraph should be withdrawn.

With respect to the rejection of claims 13 and 18 - 25 on obviousness grounds over U.S. Patent No. 6,807,900 to Iori in view of WO96/19934 to Giacomini, this rejection fails for the following reasons.

As set forth in independent claim 19, the present invention relates to a frying device for cooking foodstuffs, comprising a service drum, a unit comprising a frying drum designed as a hollow cylinder having a horizontal axis and being closed on all sides, containing liquefied cooking fat, and a discharge drum having a discharging conveyor chute, arranged coaxial within the frying drum and being attached to a cover of the frying drum, said unit being accommodated in the service drum in such a manner as to be removable from the service drum by axial displacement, a motor, a revolving agitator accommodated in the frying drum, connected to the motor and rotatable around the

fixed discharge drum, conveying cooked portions onto a conveyor chute when driven by the motor, a storage container for foodstuffs to be cooked, and a transportation pipe connecting the frying drum to the storage container for supplying the frying drum with portions of the foodstuffs.

U.S. Patent No. 6,807,900 to Iori is directed to a frying device 10 for cooking foodstuffs, comprising a service drum 16, a frying drum 39 designed as a hollow cylinder having a horizontal axis, a separate vessel 26 containing cooking liquid, a discharge drum 54 having a discharging conveyor chute 56, arranged coaxial within the frying drum 39 and being attached to a front-end cover of the service drum 16, a motor 44, a revolving agitator 32 accommodated in the frying drum 30, connected to the motor 44 and rotatable around the axis, for transporting portions of the foodstuff underneath the discharge drum 54 through the liquefied fat and conveying the cooked portions onto the conveyor chute 56 when driven by the motor 44.

The Iori patent does not disclose a unit comprising a frying drum and a discharge drum, the frying drum being closed on all sides, the frying drum containing the liquefied cooking fat, the discharge drum being attached to a cover of the frying drum, the unit being accommodated within the service drum in a manner as to be replaceable or removable by sliding one unit out of the service drum and a second unit into the service drum, a storage container for frying material of foodstuff to be cooked, and a transportation pipe connecting the frying drum to the storage container for introducing portions measured in the storage container to the frying drum.

The Giacomini reference discloses a frying device 1 for cooking foodstuffs, comprising a service drum 8, a frying drum 2 designed as a hollow cylinder having a vertical axis and being closed on all sides, containing liquefied cooking fat, a

discharge chute 4, arranged on the outside of the frying drum 2 and being attached to a cover of the frying drum 16, the frying drum 2 being accommodated in the service drum 8 in such a manner as to be removable from the service drum 8 by displacing it axially, a motor 18, a revolving agitator 23 accommodated in the frying drum 2, connected to the motor 18 and rotatable around the axis, for transporting portions of the foodstuff within the liquefied fat and a rock-crank mechanism 17 for conveying the cooked portions onto the conveyor chute 4 by lifting up the revolving agitator 23.

The Giacomini patent document does not disclose a discharge drum being attached to a cover of the frying drum, a storage container for frying material of foodstuffs to be cooked, a transportation pipe connecting the frying drum to the storage container for introducing portions measured in the storage container to the frying drum, and the cylinder having a horizontal axis.

It is submitted that it cannot be obvious for a person skilled in the art starting with Iori and having in view Giacomini to attach a discharge drum to the cover of the frying drum, nor can it be obvious to provide a storage container and a transportation pipe.

It is further not obvious to direct the cylinder axis of a liquefied fat containing frying drum horizontally. Iori reveals a frying drum with a horizontal axis, but it does not contain the liquefied fat. Giacomini reveals a frying drum with a vertical axis containing liquefied fat. If the person skilled in the art starts with the frying device of Iori looking for a solution for a frying drum closed on all sides and containing the fat, he/she would be taught by Giacomini to turn axis of the drum vertical, because turning the axis of the device of Giacomini horizontal would result in that the diathermic liquid

16 would enter through the second sleeve 26 into the frying drum 2. He/she would not get help from Iori to avoid this, because the frying drum of the device according to Iori cannot be closed on all sides.

The apparatus according to claim 19 is therefore inventive with respect to Giacomini and Iori.

Claims 13, 18, and 20 - 25 are allowable for the same reasons that claim 19 is allowable as well as on their own accord.

The instant application is believed to be in condition for allowance. Such allowance is respectfully solicited.

No fee is believed to be due as a result of this response. Should the Director determine that a fee is due, he is hereby authorized to charge said fee to Deposit Account No. 02-0184.

Should the Examiner believe an additional amendment is needed to place the case in condition for allowance, he is hereby invited to contact Applicant's attorney at the telephone number listed below.

Respectfully submitted,

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